

**PD-1047-18**

**IN THE COURT OF CRIMINAL APPEALS**

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COURT OF CRIMINAL APPEALS  
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DEANA WILLIAMSON, CLERK

**THE STATE OF TEXAS,**

**Appellant**

**VS.**

**JOSE MUSA-VALLE,**

**Appellee**

**ON DISCRETIONARY REVIEW FROM THE FOURTH COURT OF  
APPEALS DISTRICT OF THE STATE OF TEXAS**

**NO. 04-17-00278-CR**

***APPELLEE'S BRIEF ON THE MERITS IN SUPPORT OF APPELLEE'S  
PETITION FOR DISCRETIONARY REVIEW***

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| <b>Trial Court:</b>               | Honorable John Longoria   |
| <b>Court of Appeals:</b>          | Justice Marialyn Barnard<br>Justice Karen Angelini<br>Justice Rebeca Martinez (Author of<br>Opinion)  |

## **STATEMENT OF THE CASE**

Mr. Jose Musa-Valle was charged by information with discharging a firearm in a municipality. (C.R. 5). The trial court granted Mr. Musa-Valle's motion to set aside the information after hearing argument on the issue of improper venue. (R.R., pp 4-16). The State filed a timely notice of appeal, but did not request findings of fact or conclusions of law. (C.R., pp. 20-23).

On July 5, 2018, the Fourth Court of Appeals in San Antonio reversed and remanded the trial court's decision to set aside the information. *State v. Musa-Valle*, 04-17-00278-CR, 2018 WL 3264831 (Tex. App. – San Antonio 2018)(unpublished). The Fourth Court denied Mr. Musa-Valle's motion for rehearing on August 23, 2018. Appellee's Petition for Discretionary Review was granted on January 9, 2019. On February 4, 2019, this Court granted a fifteen day extension for filing of the brief. Thus, Appellee's Brief in Support of the Petition for Discretionary Review is due February 25, 2019.

## **STATEMENT REGARDING ORAL ARGUMENT**

This Honorable Court has granted permission for oral argument.

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## **STATEMENT OF THE CASE**

Mr. Jose Musa-Valle was charged by information with discharging a firearm in a municipality. (C.R. 5). The trial court granted Mr. Musa-Valle's motion to set aside the information after hearing argument on the issue of improper venue. (R.R., pp 4-16). The State filed a timely notice of appeal, but did not request findings of fact or conclusions of law. (C.R., pp. 20-23).

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## **STATEMENT REGARDING ORAL ARGUMENT**

This Honorable Court has granted permission for oral argument.

## **ISSUES PRESENTED**

### **I. QUESTION FOR REVIEW NUMBER ONE:**

Did the court of appeals err by failing to recognize municipalities' authority, granted pursuant to the doctrine of home-rule cities and by Texas Penal Code § 42.12(d), to ban the discharge of firearms?

### **II. QUESTION FOR REVIEW NUMBER TWO:**

Did the lower court err by holding the San Antonio Ordinance should be construed as a strict liability crime?

### **III. QUESTION FOR REVIEW NUMBER THREE:**

Did the court of appeals misconstrue the doctrine of *in pari materia* by requiring that all elements in the two provisions of law being compared must be identical?

## STATEMENT OF FACTS

The City of San Antonio prohibits the discharge of a firearm within the city limits. SAN ANTONIO, TEX. CODE OF CITY ORDINANCES, ch. 21, art. VI, § 21-152. The State of Texas also prohibits discharging a firearm inside the corporate limits of a municipality having a population of 100,000 or more. TEXAS PENAL CODE § 42.12. When Mr. Musa-Valle was charged under the Texas penal code for discharging a firearm inside the corporate limits of San Antonio, Texas, he filed a motion to set aside the information. (C.R., pp. 5, 10-13). He reasoned that the conduct alleged should be charged as a class C misdemeanor in San Antonio Municipal Court. (C.R., pp. 10-13). A short time later, Mr. Musa-Valle filed a supplemental motion to set aside, noting that the information was further defective for failing to allege with reasonable certainty the act, or acts relied upon by the State to show that the Defendant acted recklessly. (C.R., pp. 14-19).

The trial court conducted a hearing on these motions. (R.R., p. 4). Although the parties primarily focused on the argument regarding improper venue, the trial court's ruling on the record did not clearly state which motion he was granting.<sup>1</sup>

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<sup>1</sup>During the hearing on the motions to set aside, the prosecutor agreed that the information was faulty for failure to allege a manner and means and thus, the information needed to be amended or refiled. (R.R., p. 6). Both parties proceeded to orally argue the issue of whether county court or municipal court was the proper venue. Although it is not completely clear which motion to set aside the trial court intended to grant, the trial

(R.R., p. 16). Furthermore, the order signed by the judge was attached to the supplemental motion to set aside (the motion complaining of the lack of notice for acts constituting recklessness) and the trial court did note that the State could refile. (C.R., p. 19).

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court's ruling should stand. *See Johnson v. State*, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016) (holding that a trial court's decision should be sustained if it is correct on any theory of applicable law); *see also Montgomery v. State*, 810 S.W.2d 372, 378-79 (Tex. Crim. App. 1990).



## **SUMMARY OF THE ARGUMENT**

In San Antonio, as in many other cities in Texas, if a person discharges a firearm, that person could be charged under the city ordinance, a class C misdemeanor, or the Texas Penal Code, a class A misdemeanor.

The two laws at issue read as follows:

### **San Antonio City Ordinance § 21-152 – Discharge of firearm**

- a) It shall be unlawful for any person to discharge a firearm within the City limits of the City of San Antonio.
- b) It is an affirmative defense to prosecution for a violation of this provision that:
  - 1) The person discharging the firearm was a certified peace officer at the time and discharge was done in the performance of his duties as such; or
  - 2) The person discharging the firearm was a certified security guard at the time and the discharge was done in the performance of his duties as such; or
  - 3) The discharge was justified under the provisions of Chapter 9 of the Texas Penal code; or
  - 4) The discharge occurred at a firing range or other area designated for target practice.

### **Texas Penal Code § 42.12 Discharge of Firearm in Certain Municipalities**

- a) A person commits an offense if the person recklessly discharges a firearm inside the corporate limits of a municipality having a population of 100,000 or more.
- b) An offense under this section is a class A misdemeanor.
- c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the person may be prosecuted under either section.
- d) Subsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm.

The lower court found that the Texas Penal Code was the proper law under

which to charge Mr. Musa-Valle. Applicable law, however, militates in favor of the city ordinance. The application of two different doctrines, regulatory power of home-rule cities' and *in pari materia*, require this result.

The lower court did not address the first doctrine, San Antonio's power as a home-rule city to enact an ordinance proscribing the conduct. Instead, the lower court focused on the doctrine of *in pari materia* and erroneously found the two offenses had different elements and were therefore, not *in pari materia*.

A proper application of either doctrine, home-rule or *in pari materia*, demonstrates that the lower court erred and Mr. Musa-Valle should have been charged under the San Antonio ordinance.

## ARGUMENT

### I. QUESTION FOR REVIEW NUMBER ONE:

**Did the court of appeals err by failing to recognize municipalities' authority, granted pursuant to the doctrine of home-rule cities and by Texas Penal Code §42.12(d), to ban the discharge of firearms?<sup>2</sup>**

*A. The lower court recognized the broad regulatory power of home-rule cities but failed to apply the doctrine to this case.*

Within his motion to set aside the information for lack of jurisdiction, Mr. Musa-Valle cited to San Antonio's broad powers of self government as a home-rule city. (C.R., pp. 10-13). In Mr. Musa-Valle's brief to the Fourth Court of Appeals, he raised the issue that Ordinance § 21-152 should prevail because San Antonio is a home-rule city. (Appellee's Brief, pp. 8-10). The Fourth Court, however, did not address this issue in its memorandum opinion, except in an endnote and not responsive to Appellee's brief. Rather, the endnote, as an aside, noted a distinction between the doctrine of *in pari materia* and the doctrine of preemption. *State v. Musa-Valle*, 2018 WL 3264831, \*5, n. 3 (Tex. App.—San Antonio 2018, pet. granted)(unpublished).

Despite the lower court's recognition of the difference between the doctrine

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<sup>2</sup>Texas Penal Code § 42.12(d) reads as follows: "subsection (a) does not affect the authority of a municipality to enact an ordinance which prohibits the discharge of a firearm."

of preemption and the doctrine of *in pari materia*, the lower court did not address the home-rule city's powers directly. Instead, the court focused solely on the doctrine of *in pari materia*, erroneously concluding that the "the statute and the ordinance are not *in pari materia*, and that the State 'properly exercised its option' to prosecute Mr. Musa-Valle under the statute." *Musa-Valle*, 2018 WL 3264831 at \*5.

Interestingly, within the endnote, the lower court acknowledged the broad powers of a home-rule city. The endnote challenged the State's reliance on *State v. DeLoach*, 458 S.W.3d 696, 698 (Tex. App. – San Antonio 2015, pet. ref'd). The State cited *DeLoach* to support its position that the Ordinance § 21-152 was not enforceable. Stating that *DeLoach* discussed the doctrine of preemption, not *in pari materia*, the lower court explained that a home-rule city has broad powers. *Id.* Furthermore, the endnote explained the powers granted to a home-rule city are limited only when the legislature expresses its intent to do so with "unmistakable clarity." In conclusion, the Fourth Court of Appeals pointed out that the doctrine of preemption is not applicable in Mr. Musa-Valle's case, because § 42.12(d) made clear that the Texas Legislature expressly did not intend to preempt a municipality from enacting such an ordinance. *Id.* This statement by the lower court recognizes the authority of San Antonio to pass an ordinance relating to

discharging firearms. Furthermore, this statement recognizes that such an ordinance would not be invalidated by the Texas penal code provision. Yet, the Fourth Court failed to consider Mr. Musa-Valle's home-rule city argument. The inescapable conclusion is that, had the lower court reviewed this issue regarding home-rule city, it would have found in favor of Mr. Musa-Valle.

A finding by the lower court that the two provisions are not in *pari materia*, should not have ended the court's analysis on whether the provisions may be harmonized or are in irreconcilable conflict with one another. *Cheney v. State*, 755 S.W.2d 123 (Tex. Crim. App. 1988). "Where two provisions not in *pari materia* are at issue, other rules of statutory construction will then dictate which statute controls." *Id.* at 127. Accordingly, Appellee urges this Court to review the other rules of statutory construction, such as the home-rule city powers, that the Fourth Court of Appeals failed to address.

*B. The law regarding home-rule cities.*

The Texas Constitution was amended in 1912 to grant cities with over 5,000 citizens the power to self-govern. *See* 22 David B. Brooks, *Texas Practice: Municipal Law & Practice* § 1.17; TEX. CONST. art. XI, § 5. These cities are referred to as home-rule cities. *State v. DeLoach*, 458 S.W.3d 696, 698 (Tex. App. – San Antonio 2015, pet. ref'd.) Prior to the adoption of this constitutional

amendment, a city had to specifically seek the authority to act from the legislature or the city would be powerless to act. *Ex parte Heidleberg*, 51 Tex. Crim. 581, 103 S.W.395 ( 1907). But, as this Court noted in a case decided not long after the constitutional amendment, this approach was ineffectual. *Le Gois v. State*, 80 Tex. Crim. 356, 360; 190 S.W. 724 (1916). The legislature only meets once every two years and “as new evils arose to require the different cities and towns to rush to it and ask and secure a grant of authority and power to suppress the evil,” seeking and gaining permission to act was unduly slow and burdensome. *Id.* Accordingly, the constitutional amendment granted and conferred on the cities all the power that is not prohibited by the Constitution and the general laws of the state. *Id.* at 726.

*C. San Antonio is a home-rule city.*

As a home-rule city, San Antonio derives its powers from the Texas Constitution, not from the legislature. *State v. DeLoach*, 458 S.W.3d at 698. A home-rule city has all the powers of the State as long as the powers are not inconsistent with the Texas Constitution, the general laws, or the city’s charter. *Id.* Further, a home-rule municipality has the power to enforce ordinances “necessary to protect health, life and property and to preserve good government, order and security of the municipality and its inhabitants.” TEX. LOC. GOV’T. CODE ANN. §

54.044 (WEST 2018). As such, home-rule city ordinances are given a presumption of validity. *State v. DeLoach*, 458 S.W.3d at 698.

*D. Preemption does not occur simply because the legislature enacted a law on the subject.*

“The mere fact that the legislature has enacted a law addressing a subject does not mean that the subject matter is completely preempted.” *City of Richardson v. Responsible Dog Owners of Tex.*, 794 S.W. 2d 17, 19 (Tex. 1990). For example, this Court held that a home-rule city ordinance requiring licensing for operators of taxicabs was not preempted by state laws governing issuance and revocation of licenses. *Ex parte Heine*, 158 Tex. Crim. 248, 250; 254 S.W.2d 790 (1952). Likewise, the El Paso Court of Appeals found that although general state laws regulate the operation of bicycles and motorcycles, the home-rule city ordinance requiring a cyclist to wear a helmet was not preempted. *State v. Portillo*, 314 S.W.3d 210, 216 (Tex. App. – El Paso 2010, no pet.).

*E. The legislature authorized cities to enact laws on this issue.*

Far from expressing an intent to limit San Antonio’s, or any other city’s, right to pass ordinances regarding discharging firearms, the Legislature manifestly allowed for such local governance. Texas Penal Code § 42.12 (d) states that “[s]ubsection (a) does not affect the authority of a municipality to enact an

ordinance which prohibits the discharge of a firearm.”

*F. State law can only preempt if the legislature clearly intended to do so and it did not in this case.*

Because San Antonio is a home-rule city, it has broad powers to enact laws, unless the legislature clearly expresses an intent to limit that regulatory power.

*City of Galveston v. State*, 217 S.W.3d 466, 469 (Tex. 2007). “Such limits exist only when a statute speaks with ‘unmistakable clarity.’” *Id.*

*In re Sanchez*, 81 S.W.3d 794 (Tex. 2002), required the Texas Supreme Court to determine whether a home-rule city provision for election filing deadlines was preempted by the Texas Election Code. *Id.* at 796. The Election Code provision, §143.007(a), specifically acknowledged other code sections may provide exceptions to the state law deadline. The Supreme Court thus found that no intent to preempt was clearly manifested by the Legislature. *Id.* at 797. Indeed, the Texas Supreme Court found that the Election Code expressly allows home-rule cities to establish their own requirements in municipal elections. *Id.* Having so concluded, the Court found the city’s provision regarding election deadlines is the provision that must be applied. *Id.* at 798. Accordingly, San Antonio is a home-rule city; the state law contains a provision like the one in *Sanchez*; and so, the ordinance should prevail.



The Fourth Court of Appeals reiterated that preemption can only occur when the state law “speaks with unmistakable clarity.” *State v. DeLoach*. 458 S.W.3d 696 (Tex. App. – San Antonio 2015, pet. ref’d). In *DeLoach*, the Fourth Court evaluated a San Antonio city ordinance enforcing maximum towing fees for non-consent towing in relation to a later-enacted state law that also regulated towing fees. The Fourth Court held that the ordinance did not conflict with the later-enacted law and was not therefore preempted. *Id.* at 699. Important to the Fourth Court’s ruling was the fact that “nowhere in the Act did the legislature include a provision that contains an explicit expression of the legislature’s intent that the Act exclusively govern the regulation of non-consent tow fees.” *Id.* at 700. The Fourth Court also pointed out that the towing act at issue explicitly allowed acity to regulate the fees that may be charged or collected in connection with non-consent towing. *Id.*

Mr. Musa-Valle’s case is analogous to *DeLoach* because Texas Penal Code § 42.12 (d) explicitly allows a city to regulate the discharge of firearms within its city limits. Therefore, the ordinance in the instant case is not in conflict with legislative intent, as it was not expressly preempted. Thus, the San Antonio ordinance is a valid regulatory exercise of San Antonio’s home-rule police power.

*G. Advisory opinions issued by the Attorney General of Texas support the position that cities have the authority to regulate the discharge of firearms.*

On at least two occasions the Attorney General has been asked for opinions on whether cities have the regulatory power to pass ordinances on discharging firearms, despite the fact that general state laws exist. *See* Op. Tex. Att’y Gen. No. 94-56 (Jun. 17, 1994), Op. Tex. Att’y Gen. No. GA-0862 (June 16, 2011). Both times the Attorney General issued opinions upholding the authority of cities to regulate the discharge of firearms. *Id.*

In 1994, the Attorney General reviewed a Houston ordinance that regulated children’s discharge of firearms and its relationship with the Government Code. Op. Tex. Att’y Gen. No. 94-56 (Jun. 17, 1994). Local Government Code § 215.001 bars municipalities from regulating the transfer, private ownership, keeping, transportation, licensing, or registration of firearms. *Id.* However, subsection (b) of the statute provides: “subsection (a) does not affect the authority” of a municipality to regulate the discharge of firearms within the city limits. *Id.* In light of subsection (b), the Attorney General found the home-rule city ordinance did not, on its face, violate the government code. *Id.*

Similarly, the Attorney General stated that “Section 229.002 of the Texas Local Government Code does not prohibit a Type A general-law municipal

ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality's original city limits." Op. Tex. Att'y Gen. No. GA-0862 (To Hon. Jeff Wentworth, June 16, 2011). Based on this opinion, even non-home-rule cities may regulate discharging a firearm within city limits. *Id.* A home-rule city ordinance should have even stronger protection.

*H. The legislative history of § 42.12(d) supports the city ordinance.*

In 1995, the Senate considered a bill to make recklessly discharging a firearm inside the corporate limits of a city with a population of 100,000 or more a class A misdemeanor. Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995). Senate Bill 68, in its original form, did not contain any reference to a city's authority to regulate the same conduct, and it did not pass. *Id.* An appointed committee reviewed the proposed legislation. H.J. of Tex., 74<sup>th</sup> Leg., R.S. A493-494 (1995). The committee considered the House Research Organization bill analysis noting that opponents of Senate Bill 68 were concerned that "cities already have authority to enact ordinances otherwise regulating the firing of weapons." H.R.O., Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995).

As a result, the committee submitted a substituted version which "specified that the bill would not affect a city's authority to enact ordinances." *Id.*; C.S.S.B. 6, Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995). Both the House and Senate

passed, without objection, the substituted version and the governor signed it. H.J. of Tex., 74<sup>th</sup> Leg., R.S. 4708 (1995); S.J. of Tex., 74<sup>th</sup> Leg. R.S. 4068(1995); E.J. of Tex., 74<sup>th</sup> Leg., 4093 (1995). To be sure, the legislators did not intend to preempt the city's authority to regulate this activity.

## II. QUESTION FOR REVIEW NUMBER TWO:

**Did the lower court err by holding the San Antonio Ordinance should be construed as a strict liability crime?**

*A. This issue was not presented to the trial court and not preserved for appeal.*

The State argued, for the first time on appeal, that the two laws have different elements because Ordinance § 21-152<sup>3</sup> is a strict liability offense and Texas Penal Code § 42.12 requires the culpable mental state of recklessness. State's brief, p. 8. This argument was not presented at the trial level. (R.R., pp. 11-12). In fact, at the hearing before Judge Longoria, the State argued the opposite. *Id.* That is, the State conceded that, except for the punishment ranges, the laws were the same. "And let me be clear. It conflicts in the sense that it addresses the same conduct but it makes it a lesser offense and I think that's the main point here, is that under the city ordinance it's a class C misdemeanor, whereas under the

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<sup>3</sup>SAN ANTONIO, TEX., CODE OF ORDINANCES CH. 21, ART. VI §21-152 is silent on the issue of culpability.

Penal Code . . .” *Id.* Not one time did the State claim that the Ordinance § 21-152 was a strict liability offense. *Id.* Mr. Musa-Valle noted, in his motion for rehearing, that the State’s objection at trial did not comport with its objection on appeal and was therefore not preserved for review. *Hodge v. State*, 631 S.W.2d 754, 757 (Tex. Crim. App. 1982).

To preserve a claim for review on appeal, a party must timely object, on the record, and state the specific ground for objection. TEX. R. EVID. 103(A); TEX. R. APP. PROC. 33.1. The timely, specific objection serves two purposes: 1) it notifies the judge of the basis of the objection and affords him an opportunity to rule on it, and 2) it allows opposing counsel an opportunity to respond to the complaint. *Douds v. State*, 472 S.W.3d 670, 674 (Tex. Crim. App. 2015). A complaint is considered timely when it is made in the trial court as soon as the ground for complaint is apparent. *Id.*

Just as in Mr. Musa-Valle’s case, the State in *State v. Mercado*, 972 S.W.2d 75 (Tex. Crim. App. 1998), was the party bringing the appeal and sought to raise an issue for the first time on appeal. As such, the argument was procedurally defaulted. *Id.* at 78. This Court has not “afforded the courts of appeals latitude to reverse a trial court’s decision on new theories of law not previously presented to that court for its consideration.” *Id.* at 77.

In *Martinez v. State*, 91 S.W.3d 331, 336 (Tex. Crim. App. 2002), this Court held, “the issue is not whether the appealing party is the State or the defendant or whether the trial court’s ruling is legally “correct” in every sense, but whether the complaining party on appeal brought to the trial court’s attention the very complaint that party is now making on appeal.” The State’s failure to raise the issues before the trial court in both *Mercado* and *Martinez*, resulted in a waiver of its right to argue the issues on appeal. *Mercado v. State*, 972 S.W.2d at 78; *Martinez v. State*, 91 S.W.3d at 337. “This ‘raise it or waive it’ forfeiture rule applies equally to goose and gander, State and defendant.” *Martinez v. State*, 91 S.W.3d at 336. Since the State appealed the ruling of the trial court in this cause and it is “bound by the basic principle of appellate jurisprudence that points not argued at trial are deemed to be waived.” *Mercado v. State*, 972 S.W.2d at 78.

*B. The lower court erred in its finding that the ordinance is a strict liability offense.*

The Fourth Court of Appeals determined that Ordinance § 21-152 was a strict liability offense due to the omission of any culpability language. *State v. Musa-Valle*, 2018 WL 3264831 at \*10. This sweeping declaration directly contradicts the plain statutory language in Texas Penal Code § 6.02 (b) requiring that any intent to dispense with a culpable mental state be expressly or plainly

done so. The Fourth Court’s holding, if left undisturbed, would have a sweeping effect in declaring numerous home-rule city ordinances to be strict liability crimes due to the lack of express culpability language. A review of 308 home-rule cities’ respective codes of ordinances revealed that 209 cities out of the 285 that proscribe the discharge of firearms, do not expressly mention culpability.<sup>4</sup>

The San Antonio Ordinance is silent as to culpable mental state. San Antonio, Tex., Code of Ordinances ch. 21, art. VI, §21-152(a). When a statute is silent as to a culpable mental state, a presumption exists that a culpable mental state is required. *White v. State*, 509 S.W.3d 307, 311 (Tex. Crim. App. 2017); *Aguirre v. State*, 22 S.W.3d at 472. Although this offense is a class C misdemeanor, this Court has noted that such offenses are still crimes and “to subject offenders to such procedural consequences [as other level offenses], supports the general presumption against strict liability.” *Aguirre v. State*, 22 S.W.3d at 472. Moreover, this issue is resolved by application of Texas Penal Code § 6.02 (b) which mandates a culpable mental state, even if not prescribed by the definition of the offense, unless the definition plainly dispenses with any

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<sup>4</sup>A non-exhaustive review was performed by accessing the available code of ordinances for home rule cities that are registered with the Texas Municipal League. A list of home-rule cities registered with the Municipal League can be found at: <https://directory.tml.org/results?search%5Bcity%5D=&search%5Bcounty%5D=&search%5Bgovernment%5D%5B%5D=GTHR&search%5Bname%5D=&search%5Bsubmit%5D>. A chart containing some of this information has been attached as Appendix C.

mental element. Ordinance § 21-152 does not plainly dispense with any mental element.

In determining whether Ordinance § 21-152 requires a culpable mental state, the lower court addressed the factors articulated in *Aguirre v. State*, 22 S.W.3d 463, 470-477 (Tex. Crim. App. 1999). *State v. Musa-Valle*, 2018 WL 3264831 at \*5. All together the lower court discussed nine factors and reached the following conclusions: one factor weighed in favor of a culpable mental state; three factors were neutral; and five factors weighed in favor of strict liability.<sup>5</sup> *Id.* at \*5-10. Mr. Musa-Valle urges that the lower court improperly decided some of these factors.

*1. The factors the Court below found to be neutral actually weigh in favor of requiring a culpable mental state.*

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<sup>5</sup>The *Aguirre* factors used by the court below are as follows:

- 1) Language of the statute,
- 2) Nature of the offense as either malum prohibitum or malum in se,
- 3) Subject of the statute,
- 4) Legislative history of the statute,
- 5) Seriousness of harm to the public,
- 6) Defendant's opportunity to ascertain the true facts,
- 7) Difficulty in proving a culpable mental state,
- 8) Number of prosecutions expected, and
- 9) Severity of the punishment.

*Aguirre v. State*, 22 S.W.3d at 472. The lower court found that factor number seven, difficulty in proving a culpable mental state weighed in favor of requiring a mental state and factors four, six, and eight were neutral. The remaining factors were considered by the court below to be against requiring a culpable mental state. *State v. Musa-Valle*, 2018 WL 3264831 at \*6-10.



*a. Legislative History*

The court below noted that it was unable to take into consideration the legislative history of Ordinance § 21-152.<sup>6</sup> *State v. Musa-Valle*, 2018 WL 3264831 at \*8. Ordinance § 21-152 was passed by the San Antonio City Council in 1993. *See* City Council of San Antonio, *Regular Meeting* at 19–21 (Dec. 16, 1993). The minutes of the city council meeting reflect a discussion amongst council members and community members seeking to limit drive-by shootings and juvenile access to weapons. *Id.* These types of offenses routinely require a culpable mental state. *See* TEX. PENAL CODE ANN. § 22.02(b)(2)(D)(3) (requiring a culpable mental state for assault committed while in a vehicle). Therefore, this factor should be considered to weigh in favor of requiring a culpable mental state.

*b. Defendant's Ability to Ascertain Certain Facts*

The possibility of accidental discharge and weapon malfunctions also support the idea that not all gunshots were intended to be proscribed by legislators, especially in light of the recent expansion of open carry and concealed carry laws. *See* TEX. GOV'T CODE § § 411.172 (open carry law) and 411.2031 (concealed carry on campus law). The wide breadth of exceptions allowing the legal discharge of

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<sup>6</sup>At the trial level, no discussion about the culpable mental state of the ordinance occurred, because the State did not argue that point. Therefore, no evidence or information was presented to the trial judge to refute (or support) that § 21-152 is a strict liability ordinance.

weapons in certain places supports the notion that not all instances of discharge were intended to be criminalized without regard to culpability. *See* SAN ANTONIO, TEX., CODE OF ORDINANCES, CH. 21, ART. VI § 21-152 (2)(A-D). Moreover, a citizen might have difficulty ascertaining whether the area one is “within the city limits,” when discharging a firearm,<sup>7</sup> much like the appellant in *Aguirre* might have difficulty knowing whether she was conducting business within the specified distance from one of the specified properties. *Aguirre v. State*, 22 S.W.3d at 476-477(prosecution for conducting business within 1000 feet of a school).

*2. The factors the Court below found to be against a culpable mental state actually weigh in favor of requiring a culpable mental state.*

*a. The language of the statute.*

The court below held this factor weighed against a culpable mental state because another ordinance was passed at the same time that included a culpable mental state. SAN ANTONIO, TEX., CODE OF ORDINANCES CH. 21, ART. VI § 21-154 (2018). However, a total of five ordinances were passed on the same day. Four of these ordinances do not include culpable mental states, nor do they plainly dispense with culpable mental states. SAN ANTONIO, TEX., CODE OF ORDINANCES CH. 21, ART. VI §§ 21-152, 21-153, 21-155, 22-156. Additionally, Ordinance §21-

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<sup>7</sup>*See* Comm. Substitute, Bill Analysis, Tex. S.B. 68, 74<sup>th</sup> Leg., R.S. (1995).

157 was added two years later and contains no culpable mental state, nor does it plainly dispense with one.

*b. The nature of the offense as either malum prohibitum or malum in se.*

At the outset, it should be noted that this Court, in *Aguirre*, pointed out that “more recent decisions discount the classification of an offense as *malum prohibitum*.” *Aguirre v. State*, 22 S.W.3d at 473. The *Aguirre* Court did not utilize this factor in its analysis. *Id.*

Furthermore, cases cited by the court of appeals in denying the requirement of a culpable mental state for the city ordinance, do not support this holding. Specifically, the cases cited for the proposition that *malum prohibitum* offenses are likely to be strict liability, in fact, each found a culpable mental state was necessary. *State v. Walker*, 195 S.W.3d 293, 299 (Tex. App. – Tyler 2006, no pet.)(court required culpable mental state for *malum prohibitum* offense of filing record of unapproved plat and subdivision of real property); *Thompson v. State*, 44 S.W.3d 171, 182 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2001, no pet.)(ordinance regulating sexually oriented businesses required culpable mental state). *Thompson* referenced three cases to support the position of *malum prohibitum* offenses as strict liability: *State v. Houdaille Industries, Inc.*, 632 S.W.2d 723 (Tex. 1982); *Ex*

*Parte Weise*, 23 S.W.3d 449, 452 (Tex. App. – Houston 2000) rev'd on other grounds by *Weise v. State*, 55 S.W.3d 617 (Tex. Crim. App. 2001); and *United States v. Emerson* 46 F. Supp2d 598 (ND Tex. 1999) rev'd 270 F.3d 203, 216 (5<sup>th</sup> Cir. 2001). Two of the cases, *Weise* and *Emerson*, did conclude a culpable mental state was necessary. See *Ex parte Weise*, 23 S.W.3d at 452 (finding that a culpable mental state was required for an illegal dumping offense); *United States v. Emerson*, 270 F.3d at 216 (holding that while the defendant need not know he has a domestic violence order restraining his ability to possess a weapon, knowledge of the possession of the weapon was still required). *State v. Houdaille Industries, Inc.*, 632 S.W.2d at 730, held that because the penalty at issue was *civil*, not *criminal*, no culpable mental state was required. Regardless of the court of appeal's characterization of the ordinance at issue as *malum prohibitum*, the case law under *Thompson* provides that a culpable mental state is not precluded by this classification.

*c. The severity of the punishment.*

The law at issue in *Aguirre* was a class C misdemeanor punishable by a fine of \$500.00. *Aguirre v. State*, 22 S.W.3d at 465. The law at issue in *Musa-Valle* is the same. *State v. Musa-Valle*, 2018 WL 3264831 at \*9-10. The lower court noted that because a class C does not impose any legal disability or disadvantage,

the factor went against finding a culpable mental state. But, the *Aguirre* Court pointed out that although class C misdemeanors do not impose any legal disability or disadvantage, the offenses are still crimes. *Aguirre v. State*, 22 S.W.3d at 465. The Court went on to say that the procedural consequences that can accompany these class C misdemeanors support the “general presumption against strict liability.” *Id.* The ordinance in *Aguirre* required a culpable mental state. *Id.* at 477. Similarly, the ordinance at issue here requires a culpable mental state.

The lower court erroneously analyzed the factors laid out by *Aguirre*. Additionally, no weight was given to the legislative history surrounding the ordinance. Thus, the strong presumption against strict liability offenses as codified by the Texas Penal Code § 6.02 still stands. Therefore, although not required under the doctrine of *in pari materia*, the elements of Ordinance § 21-152 and Texas Penal Code § 42.12 are identical, and thus are *in pari materia*.

### QUESTION FOR REVIEW NUMBER THREE

**Did the court of appeals misconstrue the doctrine of *in pari materia* by requiring that all elements in the two provisions of law being compared must be identical?**

*A. The doctrine of in pari materia.*

A literal translation of the Latin phrase, *in pari materia* means “on the same subject.” *Fernandez v. State*, 269 S.W.3d 63, 65 (Tex. App. Texarkana 2008, no

pet.)(quoting Black's Law Dictionary 807 (8<sup>th</sup> ed. 2004)). *In pari materia* is a rule of statutory construction utilized when statutes deal with the same general subject, have the same general purpose, or relate to the same person or thing or class of persons or things, even if the statutes do not refer to one another, and even if they were passed by the legislature at different times. *Azeez v. State*, 248 S.W.3d 182, 191 (Tex. Crim. App. 2008).

Because Ordinance § 21-152 and Texas Penal Code § 42.12 have the same general subject and purpose and relate to the same person or class of persons, the doctrine of *in pari materia* should be utilized in the review of the conflict between the statutes. The objective of both the San Antonio ordinance and the Texas penal code provision is to prevent one from discharging a firearm in an urban environment. The plain language of each provision demonstrates a concern for the dangers of weapons in crowded areas.

*B. The court of appeals misinterpreted a line of cases regarding in pari materia and created a new requirement that all elements in both provisions be identical.*

The court of appeals reversed the trial court's order and held that Ordinance § 21-152 and Texas Penal Code § 42.12 were not *in pari materia*.<sup>8</sup> *State v. Musa-*

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<sup>8</sup>Assuming arguendo that the Fourth Court of Appeals' analysis of Ordinance § 21-152 is correct and that the provisions are not *in pari materia*, those whose conduct has violated both the city ordinance and state law would face multiple punishments for the same conduct, violating

*Valle*, 2018 WL 3264831 at \*5. Although the ordinance and the statute “clearly relate to the same subject matter and class of persons,” the court of appeals found the elements of proof are different. *Id.* The only difference in the elements of proof, according to the lower court, is that the ordinance does not contain a culpable mental state.<sup>9</sup> *Id.* at \*2. Thus, two laws designed to cover the same subject matter and the same class of persons with nearly identical elements were not considered to be *in pari materia*. Mr. Musa-Valle respectfully urges that the cases applying the doctrine of *in pari materia* have never required identical elements. *See Williams v. State*, 641 S.W.2s 236 (Tex. Crim. App. 1982); *Jones v. State*, 552 S.W.2d 836 (Tex. Crim. App. 1977); *Ex parte Harrell*, 542 S.W.2d 169 (Tex. Crim. App. 1976).

Citing *State v. Wiesman*, 269 S.W.3d 769, 775 (Tex. App. – Austin 2008, no pet.), the lower court noted that when determining whether two laws are *in pari*

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Double Jeopardy protections. *See Alejos v. State*, 555 S.W.2d 444 (Tex. Crim. App. 1977) (acknowledging that when two statutes are not found to be *in pari materia*, defendants could be charged under both the more specific provision as well as the general one); *see also Ervin v. State*, 991 S.W.2d 804 (Tex. Crim. App. 1999)(holding the *Blockburger* test to be a rule of statutory construction and that concurrent punishments could only occur when the legislature clearly intended to impose multiple punishments).

<sup>9</sup>Musa-Valle does not agree with the conclusion that the San Antonio ordinance is a strict liability law and urges this Court to reconsider this portion of the lower court’s decision as well. However, even if the lower court is correct that the ordinance does not require a culpable mental state, the doctrine of *in pari materia* should still apply under existing authority.

*materia*, courts may also consider whether the statutes have different elements of proof. *Id. Wiesman*, as made clear in further cases, does not limit the review of statutory elements as the only factor in the analysis. *Cuellar v. State*, 521 S.W.2d 277, 279 (Tex. Crim. App. 1975)(stating “Where the special statute is complete within itself, it controls, even though other statutes concerning the same subject matter contain requirements not enumerated in the special statute.”).

*Ex parte Harrell*, 542 S.W.2d at 173, held that the appellant should have been convicted under the penal code provision prohibiting possession of a forged writing with intent to utter it, rather than possession of a criminal instrument with intent to use it in the commission of an offense. *Id.* at 170-172. This Court listed the elements of each offense and despite the fact that the elements of proof were not identical, found they related to one subject and were “governed by one spirit and policy.” *Id.* Citing *Harrell*, this Court found that felony theft and hindering secured creditors statutes were *in pari materia*. *Williams v. State*, 641 S.W.2d 236, 283 (Tex. Crim. App. 1982). Importantly, this Court held this despite noted conflicts between the statutes “as to elements of proof and penalty provisions.” *Id.* at 239. Likewise, this Court found that the offenses of felony theft and official misconduct, despite having different elements, were *in pari materia* and construed them together to harmonize and give effect to the legislative intents. *Garza v.*



*State*, 687 S.W.2d 325, 332 (Tex. Crim. App. 1985).

As part of its analysis regarding the requirement of same elements of proof, the lower court relied on *Cheney v. State*, 755 S.W.2d 123, 130 (Tex. Crim. App. 1988). *State v. Musa-Valle*, 2018 WL 3264831 at \*2. *Cheney*, however, focused on whether the two provisions at issue (felony theft and making a false statement to obtain property or credit) dealt with the same general subject and had the same general purpose. *Cheney v. State*, 755 S.W.2d at 126. This Court found that while the two statutes covered the same general class of people and property, they had markedly different purposes or objectives. A review of the elements of the two provisions played a part in the Court's determination that the laws were enacted for different purposes, but was not the sole reason for the Court's decision. *Id.* at 129. Felony theft is designed to prevent a person from fraudulently receiving property by focusing on the actual acquisition. *Id.* Theft can be achieved in many ways, one of which is presenting false pretexts. But, the focus is still on the acquisition. *Id.* The goal of the latter provision, making a false statement to obtain property or credit, is to discourage people from intentionally making materially false or misleading statements. As such, the offense is complete even if the perpetrator does not obtain any property or credit. *Id.*

*C. The “general v. specific or local” canon of statutory construction requires prosecution under the San Antonio ordinance.*

In Texas, “a defendant has a due process right to be prosecuted under a ‘special’ statute that is *in pari materia* with a broader statute when these statutes irreconcilably conflict.” *Ex parte Smith*, 185 S.W.3d 887, 893 (Tex. Crim. App. 2006). If a conflict exists, the more specific or local statute shall govern, unless the general provision is the later enactment and the manifest intent is that the general provision prevail. *Sims v. State*, \_\_ S.W.3d \_\_, 2019 WL 208631, \*5 (Tex. Crim. App. Jan. 16, 2019); TEX. GOV’T CODE ANN. § 311.026(b).

A local law is defined as one limited to a specific geographic area of the state, or one that is operative or applicable only to a particular locality or fixed geographical area." 12B Tex. Jur. 3d Constitutional Law § 97; *Clark v. Finley*, 93 Tex. 171, 180; 54 S.W. 343 (Tex. 1899); *City of San Antonio v. Summerghen Property Owners Ass’n Inc.*, 185 S.W.3d 74, 88 (Tex. App.— San Antonio 2005, rev. denied). San Antonio Ordinance § 21-152 is therefore, the local provision. Although it was enacted after Texas Penal Code § 42.12, the manifest intent of § 42.12 is not to prevail.<sup>10</sup> Rather, § 42.12 specifically concedes the authority of the local rule. TEX. PENAL CODE § 42.12(d).

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<sup>10</sup>Tex. Penal Code § 42.12 was signed by the governor on June 15, 1995. E.J. of Tex., 74th Leg. 4093 (1995). San Antonio, Tex., Code of Ordinances, ch. 21, art. VI, §21-152 (1993).

More significant to this case, is the requirement under due process and due course of law that an accused be prosecuted under the specific or local offense when the range of punishment is less than that of the more general offense. *Mills v. State*, 722 S.W.2d 411, 414 (Tex. Crim. App. 1986). This Court has not hesitated to reverse conviction obtained under the more general or broader provision “especially where the convicting court would be deprived of subject matter jurisdiction in a prosecution under the specific provision.” *Id.*; *Ex parte Harrell*, 542 S.W.2d 169 (Tex. Crim. App. 1976); *Jones v. State*, 552 S.W. 2d 836 (Tex. Crim. App. 1977); *Williams v. State*, 641 S.W.2d 236 (Tex. Crim. App. 1982).

Prosecution of Mr. Musa-Valle for the local ordinance would deprive the county court at law of jurisdiction. A municipal court "shall have exclusive original jurisdiction within the territorial limits of the municipality in all criminal cases that: (1) arise under the ordinances of the municipality." TEX. CODE CRIM. PROC. ART. 4.14. Accordingly, the proper venue for charging Mr. Musa-Valle should be the San Antonio Municipal Court and not the county court. As such, the lower court's reversal of the trial court's decision should be overturned.

*D. The rule of lenity requires prosecution under the San Antonio ordinance.*

The State's position is that no doctrine or law prohibits it from prosecuting under an offense with a higher punishment range even if the two statutes are covering the same conduct. (State's Brief, pp. 9-11). In addition to the home-rule city doctrine, § 42.12 (d), and Tex. Gov. Code § 311.026, the rule of lenity prohibits prosecution under a higher punishment range. The rule of lenity requires ambiguity in criminal laws must be interpreted in favor of the defendants subjected to them. *United States v. Santos*, 128 S. Ct. 2020, 2025 (2008). Indeed, if it is unclear or ambiguous as to which law to prosecute under in Mr. Musa-Valle's case, then the rule of lenity would demand the lesser punishment of the San Antonio ordinance. In *Cuellar v. State*, 70 S.W.3d 815, 821-22 (Tex. Crim. App. 2002), Judge Cochran's concurrence explained that it is a fundamental tenet of criminal jurisprudence that when courts must choose between reasonable readings of a statute, courts should adopt the less harsh meaning. This doctrine of lenity dates back to 1886 and requires doubt be resolved in favor of the accused. *Id.* Stating it in a different way, United States Supreme Court Justice Scalia held that a long line of cases requires "the tie must go to the defendant." *United States v. Santos*, 128 S. Ct. at 2025.

Therefore, if any ambiguity exists, Mr. Musa-Valle should be given the benefit of lenity and prosecuted pursuant to the San Antonio Ordinance § 21-152.

## **PRAYER**

Jose Musa-Valle prays that for all the reasons set out above, this Court reverse the judgment of the Fourth Court of Appeals and reinstate the judgment of the trial court.

Respectfully submitted:

/s/ Stephanie L. Stevens  
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Attorneys for Appellee

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of Appellee's Brief on the Merits in Support of Appellee's Petition for Discretionary Review was electronically delivered to the District Attorney's Office, Bexar County Justice Center; 300 Dolorosa, San Antonio, Texas, and electronically delivered to the State Prosecuting Attorney's Office on this the 23<sup>rd</sup> day of February, 2019.

/s/ Stephanie L. Stevens  
STEPHANIE L. STEVENS

### **CERTIFICATE OF COMPLIANCE**

Pursuant to TEX. R. APP. PROC. 9.4(i)(3), I certify that Appellee's Brief on the Merits in Support of Appellee's Petition for Discretionary Review for Appellant contains 7233 words according to the word count of the computer program used to prepare the motion.

/s/ Stephanie L. Stevens  
STEPHANIE L. STEVENS

# APPENDIX A

June 17, 1994

Honorable Bill G. Carter  
Chair  
Public Safety Committee  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78768-2910  
Letter Opinion No. 94-56

Re: Whether provisions of a home-rule  
city ordinance directed at preventing  
children's discharge of firearms are  
invalid because inconsistent with  
provisions in Local Government Code  
section 215.001 barring municipal  
regulations relating to the transfer,  
private ownership, keeping,  
transportation, licensing, or registration  
of firearms (ID# 16486)

Dear Representative Carter:

You ask whether provisions of a City of Houston ordinance directed at preventing children's discharge of firearms are invalid because inconsistent with provisions in Local Government Code section 215.001. See HOUSTON, TEX., CODE § 28-47 (1992). Section 215.001(a) generally bars municipal "regulations relating to the transfer, private ownership, keeping, transportation, licensing, or registration of firearms." Subsection (b) of the statute, however, provides that "subsection (a) does not affect the authority" of a municipality to, inter alia, "regulate the discharge of firearms" within the city limits. Local Gov't Code § 215.001(b)(2).

Subsection (a) of the ordinance declares that the latter's purpose is "to reduce the discharges of firearms by minors." Subsection (c) of the ordinance makes it "unlawful for a child . . . to discharge a firearm within the city [limits]." Your inquiry is directed at subsections (d) and (e) which make it an offense to "facilitate, suffer, or permit the discharge" or "physical possession of a firearm by a child by allowing the child to obtain unsupervised access to [a] firearm." While these provisions, you say, "purport[] to focus on the discharge" or "possession of a firearm by a child," they "in effect, regulate[] the keeping of a firearm by an adult." You say that "[t]his is especially evident from the fact that the defenses to a violation of subsection (d)" or "(e) in subsection (f) focus on how a firearm was possessed and stored by an adult." Subsection (f) of the ordinance provides



that it is a defense to prosecution under subsections (d) and (e) that "the actor had taken reasonable precautions under the attendant circumstances to ensure that minors would not have the ability to obtain access to the firearm without supervision," including 1) storage where a child would not reasonably be expected to gain access, 2) storage in a locked container, and 3) putting a lock on the firearm.

While we cannot, of course, anticipate how the ordinance here might be sought to be applied in particular cases or determine the lawfulness of all possible applications, we do not believe that on its face or as a matter of law the ordinance runs afoul of the section 215.001 restrictions on municipal regulations pertaining to firearms. Home-rule cities like Houston, have, under the constitution, broad powers of self-government. Tex. Const. art. XI, § 5. They look to the legislature not for grants of power, but only for limitations on their power. *MJR's Fare, Inc. v. City of Dallas*, 792 S.W.2d 569, 573 (Tex. App.--Dallas 1990, writ denied). Their ordinances may not be inconsistent with state law, but they will not be found so "if any other reasonable construction leaving both in effect can be reached." Tex. Const art. XI, § 1; *City of Beaumont v. Fall*, 291 S.W. 202, 206 (Tex. 1927). Moreover, if the legislature chooses to remove a field of regulation from the home-rule power, it must do so with "unmistakable clarity." *City of Sweetwater v. Geron* 380 S.W.2d 550, 552 (Tex. 1964).

Again, subsection (b)(2) of section 215.001 states that the restrictions set out in subsection (a) of the section on municipal regulation "do not affect the authority a municipality has . . . to regulate the discharge of firearms within the limits of the municipality." The object of the ordinance here is clearly the regulation of the discharge of firearms. Further, where, as here, the object sought is the prevention of the discharge of firearms by children, the prevention of firearms coming in to the hands of children seems not only reasonable but perhaps the only effective means of attaining such object.

We are especially mindful here that, again, preemption should not be found if any reasonable construction can be reached leaving local law in place, and that the test for determining whether the legislature has intended to remove a field of regulation from a home-rule city's authority is whether it has spoken with "unmistakable clarity" to that effect. See *Fall*, 291 S.W. 202; *Geron*, 380 S.W.2d 552. Even though the ordinance here may, as you argue, also affect the "keeping" of firearms, the same could be said of any regulation of discharges of firearms. Thus, to give effect to the legislature's specific reservation to municipalities, in subsection (f), of the authority to regulate the discharge of firearms, we construe subsection (f) as having been intended to prevail over the general preemptive language of subsection (a) to the extent of conflict, and to permit municipal regulations reasonably within its ambit, as we think the ordinance here to be, despite the broad, general language of subsection (a).

#### S U M M A R Y

A home-rule city ordinance directed at the prevention of discharges of firearms by children, does not on its face violate Local Government Code section 215.001 which bars municipal regulation

of inter alia the "keeping of firearms," since the ordinance falls within the field of regulation of the discharge of firearms specifically reserved to municipalities by the statute.

Yours very truly,

Dan Morales  
Attorney General

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LDB

ID# 16486

#### INDEX HEADINGS

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#### HEADINGS

Guns

Cities and Towns

See also Penal Code section 46.07(a)(2), making it an offense to intentionally or knowingly sell, rent, lease, or give a child a firearm, or offer to do so, with exception for transfers with consent of parent or custodian.

Please note that, in accordance with your question, we consider here only the validity of the ordinance vis-à-vis section 215.001. We do not attempt to address here e.g., its constitutionality under article I, section 23, of the state constitution (right to keep and bear arms), or article I section 10 thereof (requiring that penal provision give adequate notice of conduct it seeks to proscribe).

(footnote continued)

Honorable Bill G. Carter - Page 4 (LO94-56)

# APPENDIX B



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 16, 2011

The Honorable Jeff Wentworth  
Chair, Select Committee on  
Open Government  
Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711-2068

Opinion No. GA-0862

Re: Authority of a Type A general-law municipality  
to adopt and enforce an ordinance prohibiting the  
discharge of certain firearms or other weapons on  
property located within its original corporate limits  
(RQ-0937-GA)

Dear Senator Wentworth:

You ask about the authority of a Type A general-law municipality “to adopt and enforce a firearm discharge ban on property located within its original corporate boundaries.”<sup>1</sup> A municipality is authorized to adopt and enforce an ordinance “for the good government, peace, or order of the municipality.” TEX. LOC. GOV’T CODE ANN. § 51.001 (West 2008). *See also id.* §§ 51.012 (authority of a Type A general-law municipality to adopt “an ordinance, act, law, or regulation, not inconsistent with state law, that is necessary for the government, interest, welfare, or good order of the municipality as a body politic”), 54.001 (general enforcement authority of municipalities). Chapter 229 of the Local Government Code recognizes the potential authority of a municipality to “regulate the discharge of firearms within the limits of the municipality.” *Id.* § 229.001(b)(2).<sup>2</sup>

You note, however, that section 229.002 of the Local Government Code creates a general limitation on such authority:

A municipality may not apply a regulation relating to the discharge of firearms or other weapons in the *extraterritorial jurisdiction* of the municipality or in an *area annexed* by the municipality after September 1, 1981, if the firearm or other weapon is:

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<sup>1</sup>See Letter from Honorable Jeff Wentworth, Chair, Select Committee on Open Government, to Honorable Greg Abbott, Attorney General of Texas at 1, 3 (Dec. 29, 2010), [https://www.oag.state.tx.us/opin/index\\_rq.shtml](https://www.oag.state.tx.us/opin/index_rq.shtml) (“Request Letter”).

<sup>2</sup>See also TEX. AGRIC. CODE ANN. § 251.005(c) (West Supp. 2010) (providing that municipal requirements do not apply to an agricultural operation on land brought within the corporate limits after a certain date unless “reasonably necessary to protect persons who reside in the immediate vicinity or persons on public property in the immediate vicinity of the agricultural operation from the danger of . . . discharge of firearms or other weapons, subject to the restrictions in Section 229.002, Local Government Code”).

(1) a shotgun, air rifle or pistol, BB gun, or bow and arrow discharged:

(A) on a tract of land of 10 acres or more and more than 150 feet from a residence or occupied building located on another property; and

(B) in a manner not reasonably expected to cause a projectile to cross the boundary of the tract[.]

*Id.* § 229.002 (emphasis added); *see* Request Letter at 1–2.

The limitation in section 229.002 expressly applies to a municipality’s extraterritorial jurisdiction and to certain annexed property, but does not mention property located within the municipality’s original city limits. In Texas statutes, boundaries established by municipal incorporation, annexation, and extraterritorial jurisdiction involve different concepts and authority.

Incorporation creates a municipality and establishes its original boundaries.<sup>3</sup> A municipality’s extraterritorial jurisdiction, however, is by definition an area outside of its corporate boundaries. *See* TEX. LOC. GOV’T CODE ANN. § 42.021 (West 2008) (stating that “[t]he extraterritorial jurisdiction of a municipality is the unincorporated area that is contiguous to the corporate boundaries of the municipality”).

Likewise, annexation is distinct from incorporation. A municipality’s annexation authority is generally limited to property located in its extraterritorial jurisdiction. *Id.* § 43.051. Upon annexation, the area annexed by a Type A general-law municipality “becomes a part of the municipality.” *See id.* §§ 43.023(g) (authority of Type A general-law municipality with a population over 5,000 to annex contiguous property), 43.024(d) (annexation authority of Type A general-law municipality). *See also Elliott Common Sch. Dist. No. 48 v. Cnty. Bd. of Sch. Trustees*, 76 S.W.2d 786, 789 (Tex. Civ. App.—Texarkana 1934, writ dismissed) (stating that “[a]s ordinarily understood ‘annex’ means to make an integral part of something larger”).

Thus, property located in a municipality’s original corporate boundaries is not property “in the extraterritorial jurisdiction of the municipality or in an area annexed by the municipality,” as section 229.002 provides. TEX. LOC. GOV’T CODE ANN. § 229.002 (West 2008). In construing a statute, it is presumed that the Legislature chooses its words carefully, that words are included in a statute for a purpose, and that words not included were purposely omitted. *Kappus v. Kappus*, 284 S.W.3d 831, 835 (Tex. 2009); *In re M.N.*, 262 S.W.3d 799, 802 (Tex. 2008). Accordingly, section 229.002 of the Local Government Code does not prohibit a Type A general-law municipal ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality’s original city limits.

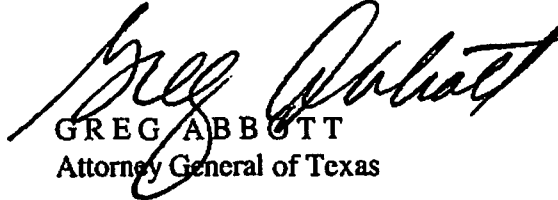
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<sup>3</sup>*See* TEX. LOC. GOV’T CODE ANN. §§ 5.901 (general-law municipality territorial requirements), 6.001–.002 (authority to incorporate as a Type A general-law municipality utilizing procedures applicable to a Type B general-law municipality), 7.001–.007 (procedures for incorporating as a Type A or Type B municipality, resulting in an order that “include[s] the boundaries of the municipality”) (West 2008).

**S U M M A R Y**

Section 229.002 of the Texas Local Government Code does not prohibit a Type A general-law municipal ordinance from regulating the discharge of a firearm or other weapon in an area that is within the municipality's original city limits.

Very truly yours,

  
GREG ABBOTT  
Attorney General of Texas

DANIEL T. HODGE  
First Assistant Attorney General

DAVID J. SCHENCK  
Deputy Attorney General for Legal Counsel

JASON BOATRIGHT  
Chair, Opinion Committee

William A. Hill  
Assistant Attorney General, Opinion Committee

# APPENDIX C

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| City               | Gun Ordinance? | Express Culpability Language | Notes  |
|--------------------|----------------|------------------------------|--|
| Alton              | No             | N/a                          |  |
| Bonham             | No             | N/a                          |  |
| Brenham            | No             | n/a                          | sec 17-1 all provisions of penal code and other statutes of the state defining misdemeanors and providing for punishment thereof of which city has jurisdiction, are hereby adopted as offenses against the city, punishable as provided in said statute |
| Bridge City        | No             | N/a                          |  |
| Brownfield         | No             | N/a                          |  |
| Dayton             | No             | N/a                          |  |
| Decatur            | No             | N/a                          |  |
| Dickinson          | No             | N/a                          |  |
| Freeport           | No             | N/a                          | ref to 229.001 in sec 1-3; under offenses 30-1 as in penal code 1.01   |
| Los Fresnos        | No             | N/a                          | sec 30-1 state law adopted- corresponding provisions/ fines and penalties and other punishment shall be the same   |
| Wichita Falls      | No             | N/a                          |  |
| Bay City           | No             | N/a                          |  |
| Gonzales           | No             | N/a                          | Discharge illegal in city parks  |
| Hempstead          | No             | N/a                          |  |
| Hereford           | No             | N/a                          |  |
| Keene              | No             | N/a                          |  |
| Mexia              | No             | N/a                          |  |
| Midlothian         | No             | N/a                          |  |
| Muleshoe           | No             | N/a                          |  |
| Navasota           | No             | N/a                          |  |
| Providence Village | No             | N/a                          |  |
| Robstown           | No             | N/a                          |  |
| Andrews            | Yes            | No                           | TPC 46.01  |
| Addison            | Yes            | No                           | unlawful 54-31; ref penal code ch 46   |
| Alamo Heights      | Yes            | No                           | air, gas spring guns: 10-5   |
| Alice              | Yes            | No                           | unlawful 58-1; ref to 42.001, ref to govt code 215 in other chapters not in gun one  |
| Allen              | Yes            | No                           | unlawful sec 10-1; ref to penal code 42.1(d)   |



|               |     |    |   |
|---------------|-----|----|---|
| Amarillo      | Yes | No | unlawful sec 10-3-27 no ref to penal code for firearms; 42.0001 & 42.09etc in dif sec , 215                                 |
| Angleton      | Yes | No | TPC 42.001  |
| Anna          | Yes | No | No culpability mention  |
| Aransas Pass  | Yes | No | sec 18-9 unlawful; ref to penal code 42.01  |
| Austin        | Yes | No | sec 9-6-7; no ref to penal code   |
| Balch Springs | Yes | No | 54-62; 46 in sec 54-121, 42 in dif sec 215 in dif sec   |
| Bedford       | Yes | No | 82-43; penalty shall not exceed penalty prescribed in sec1-7 or prescribed by state law (82-1) 42 in dif sec 215 in dif sec |
| Beeville      | Yes | No | sec 1-3 cites local govt code 229.001; sec 32-2; 42 in dif sec 215 in dif sec 229 in dif sec                                |
| Bellaire      | Yes | No | Ref to TGC 229.01   |
| Bellmead      | Yes | No | TPC 42.01   |
| Belton        | Yes | No | No culpability mention  |
| Benbrook      | Yes | No | sec 9.20.010; weapons ref to 229; 42 dif sec  |
| Boerne        | Yes | No | Ref to 215.001  |
| Borger        | Yes | No | No culpability mention  |
| Bowie         | Yes | No | No culpability mention  |
| Brady         | Yes | No | No culpability mention  |
| Breckenridge  | yes | No | sec 14-2; ref 46.01 for def   |
| Brownwood     | yes | No | sec 42-1; shall be defined as by penal code   |
| Bryan         | Yes | No | sec 82-5 ; 42 ref in dif sec 215 in dif sec   |
| Burkburnett   | Yes | No | No culpability mention  |
| Burleson      | Yes | No | sec 54-2; ref to penal code 250.001 42 in dif sec   |
| Burnet        | Yes | No | sec 70-3; 42 ref in dif sec 215 in dif sec  |
| Cameron       | Yes | No | Ref to penal and gov code   |
| Canyon        | Yes | No | No culpability mention  |
| Carrollton    | Yes | No | sec 130.11;   |
| Carthage      | Yes | No | sec 38-3; justification in penal code   |
| Cedar Hill    | Yes | No | sec 14-41, 14-4; no ref   |
| Cedar Park    | Yes | No | No culpability mention  |
| Celina        | Yes | No | No culpability mention  |
| Childress     | Yes | No | ref to 229.001(b) in 1-3; 32-47 ref to 229.002 and 42.01  |

|                |     |    |  |
|----------------|-----|----|--|
| Cibola         | Yes | No | 50-22; ref to 229.001  |
| Cleburne       | Yes | No | No culpability mention   |
| Cleveland      | Yes | No | 82-67; no ref  |
| Clute          | Yes | No | sec 78-1 no ref  |
| Colleyville    | Yes | No | sec 62-1 ref to 229.001 and 42.001(7)-(9) and tex const art 1 sec 23   |
| Commerce       | Yes | No | 62-3; sec 1-14 gen penalty cites 54; no specific penalty provided/declared unlawful-fine not to exceed 500 except that a fine of not more than 2,000 imposed upon, no penalty shall be greater or less than penalty provided for same or similar offense under laws of the state |
| Conroe         | Yes | No | 46-3; 1-13 cites 54 and 29; prohibited or declared unlawful not exceed 500 except that a fine not more than 2,000  |
| Converse       | Yes | No | 229.001 reference; sec 1-14 prohibited or unlawful 500/2,000 cites govt code 54  |
| Coppell        | Yes | No | 1-16-3 an offense under this article shall be deemed a misdemeanor not exceed 500  |
| Copperas Cove  | Yes | No | 13-2; prohibited/declared unlawful or offense misdemeanor 500/20000, nothing shall conflict with senate bill 920 1987 tex leg  |
| Corinth        | Yes | No | 10.99 not exceed 500 the max under the state shall apply if penalty in this code is greater cites govt code 54   |
| Corpus Christi | Yes | No | 33-75; ref to 229.001 1-6 gen penalty  |
| Corsicana      | Yes | No | 7.202; 1.106 gen pen not exceeding 500, no penalty shall be greater or less than   |
| Crockett       | Yes | No | 15-17; 1-11 gen penal prohibited/unlawful not exceed 1000  |
| Crowley        | Yes | No | 54-1; no ref to penal code   |
| Crystal City   | Yes | No | 34-1; ref to 229.001   |
| Deer Park      | Yes | No | gen penal 1-14 prohibited or unlawful not exceed 2000 ref 54, 53, 29; discharge of firearms 62-23 ref 229 and 42   |
| Del Rio        | Yes | No | prohibited/unlawful exceed fine 1000; discharging firearm 19-2   |
| Denison        | Yes | No | 1-12 gen penalty prohibited/unlawful not exceed 2000, ref 54; 11-5 govt code 411   |
| Denton         | Yes | No | 1-12 gen pena no specific penalty ref to 53  |
| DeSoto         | Yes | No | No culpability mention   |
| Diboll         | Yes | No | TPC 46.01  |

|                |     |    |   |
|----------------|-----|----|---|
| Duncanville    | Yes | No | 1-5 gen prohibited/unlawful ref to 54; 12-5 discharge firearms no ref                           |
| Eagle Pass     | Yes | No | 1-5 gen pen prohibited/unlawful' 19-15 no ref   |
| Edinburg       | Yes | No | No culpability mention  |
| Fairview       | Yes | No | Ref to TGC 229.002  |
| Farmers Branch | Yes | No | 1-14 gen penalty prohibited/unlawful ref 54; 46-1 ref 411 , 42, 250                             |
| Fate           | Yes | No | 1-14 gen penalty prohibited/unlawful ref 54; 18-94  |
| Flower Mound   | Yes | No | 1-13 gen pen prohibited/ unlawful ref to 54 and 29 ; 50-52 discharge                            |
| Fort Worth     | Yes | No | 1-14 prohibited/unlawful ref to 54 and 29, 54-1 ref to 229 and 42                               |
| Galveston      | Yes | No | 1-7 prohibited/unlawful ; 24-15 discharge   |
| Garland        | Yes | No | No culpability mention  |
| Georgetown     | Yes | No | 1.08.010 prohibited/unlawful, 9.09.020  |
| Grand Prairie  | Yes | No | 1-8 gen pen prohibited/unlawful ; 17-50 discharge   |
| Grapevine      | Yes | No | 1-6 gen pen prohibited/unlawful ref 29; 15-2 discharge ref to 42                                |
| Greenville     | Yes | No | No culpability mention  |
| Haltom City    | Yes | No | (Ord. No. 83-14, § 1, 8-15-83) sec 1-5 gen pen ref to 54; sec 66-13 dangerous weapons ref to 42 |
| Harlingen      | Yes | No | 1-7 gen pen prohibited/unlawful ref 54; 34-84 discharge   |
| Huntsville     | Yes | No | 1-11 gen pen prohibited/unlawful ref 51 and 54; 32-25 discharge ref 229                         |
| Hurst          | Yes | No | 1-5 gen pen, 14-2 discharge ord no 1353, sec 2 12-10-91   |
| Irving         | Yes | No | 1-6 gen pen prohibited/unlawful ref 54 24-2 discharge ref 42 and 229                            |
| Keller         | Yes | No | 1-500 gen pen 10-100 unlawful discharge   |
| Kerrville      | Yes | No | 1-7 gen pen prohibited/unlawful ref 54; 74-13 rd no 2016-04                                     |
| Killeen        | Yes | No | 1-8 gen pen ref 54 16-43 discharge  |
| Kingsville     | Yes | No | ref to Tex. Govt Code 215.001   |
| Kyle           | Yes | No | 1-14 gen pen ref 54; 23-11 discharge ref 229  |
| La Porte       | Yes | No | 1-14 gen pen ref 54; 42-30 discharge  |
| Lake Jackson   | Yes | No | 1-5 gen pen ref 54 and 29; 62-31 discharge  |
| Laredo         | Yes | No | 1-6 gen pen; 21-151 discharge   |
| League City    | Yes | No | 1-5 gen pen ref 29 70-1 discharge   |
| Little Elm     | Yes | No | 1-10 gen pen ref 54; 70-130 discharge   |
| Lubbock        | Yes | No | No culpability mention  |
| Mansfield      | Yes | No | No culpability mention  |
| Marshall       | Yes | No | No culpability mention  |

|                      |     |    |  |
|----------------------|-----|----|--|
| McKinney             | Yes | No | No culpability mention   |
| Mesquite             | Yes | No | No culpability mention   |
| Mission              | Yes | No | 1-8 gen pen ref 54 16-43 discharge   |
| Nacogdoches          | Yes | No | No culpability mention   |
| North Richland Hills | Yes | No | No culpability mention   |
| Paris                | Yes | No | No culpability mention   |
| Pearland             | Yes | No | No culpability mention   |
| Pharr                | Yes | No | No culpability mention   |
| Plainview            | Yes | No | 229.001 reference  |
| Richardson           | Yes | No | 1-8 gen pen ref 54; 13-32 unlawful ref to 46   |
| Rosenberg            | Yes | No | 1-13 gen pen ref 54, 53, 29; 18-2 discharge  |
| Round Rock           | Yes | No | 1-9 gen pen prohibited/unlawful ref to 54; 24-2 discharge unlawful ref 217                 |
| Rowlett              | Yes | No | 1-13 gen pen ref 54, 29 43-31 unlawful   |
| Sachse               | Yes | No | 1-7 gen pen prohibited/unlawful; 6-4 discharge   |
| Saginaw              | Yes | No | 1-13 gen pen prohibited/unlawful ref 54 and 29; 54-32 unlawful                             |
| San Angelo           | Yes | No | 1.01.009 gen pen prohibited/unlawful ref 54; 8.02.004 discharge unlawful                   |
| San Antonio          | Yes | No | 1-5 gen pen prohibited or unlawful; 21-152 unlawful  |
| San Benito           | Yes | No | No culpability mention   |
| San Marcos           | Yes | No | 1.015 gen pen ref 54; 54.026 discharge unlawful  |
| Seguin               | Yes | No | 1-14 gen pen prohibited/unlawful ref 53, 54, 29; 70-72 discharge unlawful                  |
| Socorro              | Yes | No | 1-15 gen pen prohibited/unlawful ref 54, 53, 29; 30-25 discharge prohibited ref 229 and 42 |
| Southlake            | Yes | No | 1-7 gen pen prohibited/unlawful ref 54, 341 29 and 30; 11-31 discharge unlawful            |
| Stafford             | Yes | No | 1-12 gen pen ref 54, 341, 29 and 43  |
| Stephenville         | Yes | No | No culpability mention   |
| Sugar Land           | Yes | No | 1-12 gen pen ref 54, 341, 29 and 43; 54-21 discharge unlawful ref 42                       |
| Sunnyvale            | Yes | No | No culpability mention   |
| Sweetwater           | Yes | No | Authority of city to prohibit discharge of firearms, Vernon's Ann. Civ. St. art 1015(22).  |
| Taylor               | Yes | No | 1-8 gen pen prohibited/unlawful; 19-1 discharge unlawful                                   |

|                  |     |    |  |
|------------------|-----|----|--|
| Temple           | Yes | No | 1-9 gen pen prohibited/unlawful; 22-9  |
| Terrell          | Yes | No | 1-1(g) prohibited/unlawful; 8-9 discharge prohibited                           |
| Terrell Hills    | Yes | No | No culpability mention   |
| Texarkana        | Yes | No | 1-5 gen pen prohibited/unlawful; 28-6 firearms discharge prohibited            |
| Texas City       | Yes | No | No culpability mention   |
| The Colony       | Yes | No | 1-5 gen pen prohibited/unlawful ref 54, 29, 43; 13-1 discharging weapon ref 46 |
| Tomball          | Yes | No | Ref tp Gov 217   |
| Trophy Club      | Yes | No | Ref to Gov 229.001   |
| Universal City   | Yes | No | TPC 46.002   |
| Victoria         | Yes | No | No culpability mentioned   |
| Wake Village     | Yes | No | No culpability mentioned   |
| Waxahachie       | Yes | No | No culpability mentioned   |
| Weatherford      | Yes | No | No culpability mentioned   |
| Webster          | Yes | No | No culpability mentioned   |
| Weslaco          | Yes | No | No culpability mentioned   |
| Wharton          | Yes | No | No culpability mentioned   |
| White Oak        | Yes | No | No culpability mentioned   |
| White Settlement | Yes | No | No culpability mentioned   |
| Whitehouse       | Yes | No | No culpability mentioned   |
| Willis           | Yes | No | No culpability mentioned   |
| Wylie            | Yes | No | No culpability mentioned   |
| Yoakum           | Yes | No | No culpability mentioned   |
| Brownsville      | Yes | No | No culpability required  |
| Floresville      | Yes | No | Ref to TGC 229.002   |
| Fredericksburg   | Yes | No | Ref to TGC 229.002   |
| Gainesville      | Yes | No | No culpable mentioned  |
| Galena Park      | Yes | No | Ref to TGC 229.002   |
| Gatesville       | Yes | No | , V.T.P.C., Arts. 480, 480a; s   |
| Giddings         | Yes | No | TGC 229.001  |
| Gilmer           | Yes | No | No culpability mentioned   |
| Graham           | Yes | No | No culpability mentioned   |
| Jacinto City     | Yes | No | No culpability mentioned   |

|                 |     |    |  |
|-----------------|-----|----|--|
| Jacksonville    | Yes | No | No culpability mentioned   |
| Jasper          | Yes | No | No culpability mentioned   |
| Jersey Village  | Yes | No | No culpability provisions  |
| Katy            | Yes | No | No culpability provisions  |
| Kaufman         | Yes | No | No culpability mentioned   |
| Athens          | Yes | No | unlawful sec 14-4; ord. 10-24-66   |
| Atlanta         | Yes | No | express mention of no culpability for other articles, but not gun discharge  |
| Bastrop         | Yes | No | unlawful sec 8.07.002; 1995 code 7.702,7.703   |
| Carrizo Springs | Yes | No | unlawful; section 26-1; code 1971 sec 10-1 code 1992 sect 13-1   |
| Dumas           | Yes | No | No culpability provisions  |
| Elgin           | Yes | No | unlawful; sec24-68; code ch 1 sec 13   |
| Ennis           | Yes | No | unlawful; sec 12-4 code 1996 sec 19-11   |
| Gladewater      | Yes | No | Culpability expressly dispensed under different chapters but not gun ordinance chapter   |
| Granbury        | Yes | No | Dispels culpability in other articles, but not gun article   |
| Gun Barrel City | Yes | No | Statutory reference: Regulation of firearms, see Tex. Local Gov't Code §§ 215.001 and 217.003(c)   |
| Heath           | Yes | No | No culpability provisions  |
| Henderson       | Yes | No | Unless otherwise provided herein, or by law or implication required, the same rules of construction, definition and application shall govern the interpretation of this code as those governing the interpretation of state law. |
| Hewitt          | Yes | No | unlawful, 42-26 code 1984 sec 9-2  |
| Humble          | Yes | No | 28-1, ord 95-484 sec 1   |
| Kennedale       | Yes | No | sec 12-2, code 1977 sec 11-21  |
| Kermit          | Yes | No | No culpability mentioned in code   |
| La Marque       | Yes | No | unlawful; sec 44-150; code 1972 sec 11-61 ord no 801 sec 1   |
| Lacy-Lakeview   | Yes | No | unlawful; sec 130.01ord92-67   |
| Lampasas        | Yes | No | unlawful; 50-1 ord no 365 sec 3  |
| Levelland       | Yes | No | However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state.  |
| Littlefield     | Yes | No | (d) No penalty shall be greater or less than the penalty provided for the same or a similar offense under the laws of the state.   |



|                |     |    |   |
|----------------|-----|----|---|
| Live Oak       | Yes | No | ord no 138 sec 1, ord no 386 sec 1 g, 2,5-7   |
| Luling         | Yes | No | unlawful; 74-1 code 1966 15-7   |
| Lumberton      | Yes | No | unlawful; 32-21; ord no 93-1087 sec III   |
| Marble Falls   | Yes | No | unlawful; 14-4  |
| McGregor       | Yes | No | unlawful; 36-50; ord 081103A  |
| Melissa        | Yes | No | unlawful; art 7.200; ord 16   |
| Mineral Wells  | Yes | No | unlawful; 66-2 code 1970 16-6   |
| Monahans       | Yes | No | unlawful; 18-6; ord no 289 sec 1  |
| Mount Pleasant | Yes | No | Any act, the commission of which constitutes a misdemeanor under the laws of the state, is prohibited within the city, and if committed within the city, is declared to be an offense; provided, however, that the penalty therefor shall not exceed the penalty prescribed in § 10.99 or the penalty prescribed by state law, whichever is less. |
| Nederland      | Yes | No | No culpability mentioned  |
| Orange         | Yes | No | unlawful; 7.301 1982 code of ord ch 8 sec 4A  |
| Palestine      | Yes | No | No culpability mentioned  |
| Pampa          | Yes | No | No culpability mentioned  |
| Pecos          | Yes | No | 40-3, code 1987 15-3(a),(b)   |
| Pleasanton     | Yes | No | No culpability mentioned  |
| Port Isabel    | Yes | No | No culpability mentioned  |
| Port Lavaca    | Yes | No | unlawful; 30-2 ord 2-10-1958 sec 1  |
| Port Neches    | Yes | No | unlawful; 78-1, ord 1998-20 sec 2 6-18-1998   |
| Portland       | Yes | No | unlawful; 11-11 ord no 560 sec 1-3 11-11-78   |
| Prairie View   | Yes | No | No culpability mentioned  |
| Richland Hills | Yes | No | unlawful; 58-1 code 1984 ch 7 sec 1   |
| Richmond       | Yes | No | unlawful; 24-6 ord of 6-9-1956 sec IV, VII  |
| River Oaks     | Yes | No | (4) The person discharged the weapon in the protection of life or property as defined in the penal statutes of the state, so long as such discharge was not done in a reckless or negligent manner; or  |
| Roanoke        | Yes | No | sec 7.401 ord 91-101  |
| Robinson       | Yes | No | unlawful; 12-26, ord 2012-010 sec 1 8-7-12  |
| Rockport       | Yes | No | No culpability mentioned  |
| Rockwall       | Yes | No | unlawful; 22-2 ord no 78-13 sec 1-3   |

|                 |     |             |   |
|-----------------|-----|-------------|---|
| Roma            | Yes | No          | unlawful; 54-2 ord no 2016-02 sec II  |
| Rusk            | Yes | No          | No culpability mentioned  |
| Sanger          | Yes | No          | No culpability mentioned  |
| Santa Fe        | Yes | No          | unlawful; sec 8 ord no 08-90  |
| Seabrook        | Yes | No          | unlawful; 44-78 ord no 2016-15 sec 2  |
| Sealy           | Yes | No          | unlawful 66-2, ord no 2016-27 sec 2   |
| Slaton          | Yes | No          | No culpability mentioned  |
| Cameron Park    | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state" |
| Frisco          | Yes | Strict liab | separate provision dispelling culpability   |
| Lancaster       | Yes | Strict liab | no culpability if fine under \$500  |
| Pflugerville    | Yes | Strict liab | separate provision dispelling culpability   |
| Port Arthur     | Yes | Strict liab | separate provision dispelling culpability   |
| San Juan        | Yes | Strict liab | no culpability if fine under \$500  |
| Sherman         | Yes | Strict liab | separate provision  |
| Bridgeport      | Yes | Strict liab | No culpability if under \$500 fine  |
| Buda            | Yes | Strict liab | No culpability if under \$500 fine  |
| Bulverde        | Yes | Strict liab | No culpability if under \$500 fine  |
| Cuero           | Yes | Strict liab | Separate provision dispelling culp.   |
| Dallas          | Yes | Strict liab | No culpability if fine under \$500  |
| El Paso         | Yes | Strict liab | Separate provision dispelling culp.   |
| Eules           | Yes | Strict liab | No culpability if fine under \$500  |
| Fair Oaks Ranch | Yes | Strict liab | No culpability if fine under \$500  |
| Friendswood     | Yes | Strict liab | No culpability if under \$500 fine  |
| Harker Heights  | Yes | Strict liab | Separate provision dispelling culp.   |
| Horizon City    | Yes | Strict liab | No culpability if fine under \$500  |
| Hutto           | Yes | Strict liab | No culpability if fine under \$500  |
| Leander         | Yes | Strict liab | No culpability if fine under \$500  |
| Lewisville      | Yes | Strict liab | No culpability if fine under \$500  |
| Murphy          | Yes | Strict liab | Expressly dispensed - separate provision  |
| Odessa          | Yes | Strict liab | No culpability if fine under \$500  |
| Tyler           | Yes | Strict liab | No culpability if under \$500 fine  |



|                      |     |             |   |
|----------------------|-----|-------------|---|
| University Park      | Yes | Strict liab | No culpability if under \$500 fine  |
| Uvalde               | Yes | Strict liab | No culpability if under \$500 fine  |
| Vernon               | Yes | Strict liab | Separate provision  |
| Vidor                | Yes | Strict liab | Separate provision  |
| Watauga              | Yes | Strict liab | Separate provision  |
| West University Plac | Yes | Strict liab | Separate provision  |
| Windcrest            | Yes | Strict liab | No culpability if under \$500 fine  |
| Woodway              | Yes | Strict liab | Separate provision  |
| Forest Hill          | Yes | Strict liab | Separate provision  |
| Forney               | Yes | Strict liab | No culpability if under \$500 fine  |
| Abilene              | Yes | Strict liab | "a culpable mental state is not required for the commission of an offense under this Code unless the provision defining the conduct expressly requires a culpable mental state, otherwise the requirement of a culpable mental state is expressly dispensed with for purposes of constituting, alleging, or proving a violation of a provision of this Code."   |
| Beaumont             | Yes | Strict liab | Under \$500 requires no culpability   |
| Iowa Park            | Yes | Strict liab | any offense under \$500 fine doesnt require culpability   |
| Edna                 | Yes | Strict liab | No culp if under \$500 fine, culpability req if over \$500  |
| Plano                | Yes | Strict liab | "Unless specifically stated within the provision of this Code, any violation of this Code or any ordinance set forth herein that is punishable by a fine that does not exceed the amount authorized by section 12.23 of the Texas Penal Code does not require a culpable mental state and a culpable mental state is hereby expressly waived; however, any violation of this Code or any ordinance set forth herein that is punishable by a fine that exceeds the amount authorized by section 12.23 of the Texas Penal Code, as the same may be amended from time to time, shall require a culpable mental state of criminal negligence unless a higher culpable mental state has been provided by ordinance." |

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|-----------------|-----|-------------|---|
| Ingleside       | Yes | Strict liab | Sec. 1-16. - Culpable mental state for violations of Code. Whenever (1) in this Code or (2) in any ordinance of the city, or in any code, rule, law, regulation or compilation of such adopted by this Code, collectively hereinafter referred to as "other law", an act is prohibited or is made or declared to be unlawful, an offense or a misdemeanor and no specific, culpable mental state is expressly required, or whenever in this Code or other law, the doing of an act is required or the failure to do an act is declared to be unlawful, and no specific, culpable mental state is expressly required, no culpable mental state shall be required in order for such act, conduct or failure to constitute a criminal offense, and it shall not be necessary for the state; city or prosecution to prove any culpable mental state in order to prove a violation of this Code or other law, it being intended that all such offenses be strict liability offenses. |
| McAllen         | Yes | Strict liab | Separate ordinance dispelling requirement of culpability  |
| Missouri City   | Yes | Strict liab | Separate ordinance dispelling requirement of culpability  |
| Joshua          | Yes | Strict liab | (d) Neither allegation nor evidence of a culpable mental state is required for the proof of an offense defined by this article.   |
| Glenn Heights   | Yes | Strict liab | Allegation and evidence of a culpable mental state is not required for the commission of an offense under this code   |
| Granite Shoals  | Yes | Strict liab | Under \$500, no culpability requirement   |
| Lago Vista city | Yes | Strict liab | express mention of no culpability required  |
| Silsbee         | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"   |
| New Braunfels   | Yes | Strict liab | Where no specific culpable mental state is otherwise provided, it is hereby declared that the culpable mental state required by V.T.C.A., Penal Code § 6.02 is specifically negated and clearly dispensed with, and such offense is declared to be a strict liability offense. The provisions of this subsection are hereby incorporated by reference into the definition of all current and future ordinance created offenses situated throughout this Code where no specific culpable mental state is specified.  |
| Azle            | Yes | Strict liab | Under \$500, no culpability requirement   |

|                  |     |             |  |
|------------------|-----|-------------|--|
| Highland Park    | Yes | Strict liab | Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that does not exceed five hundred dollars (\$500.00) does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense. Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that exceeds five hundred dollars (\$500.00) shall require a culpable mental state. |
| Highland Village | Yes | Strict liab | A culpable mental state is not required for the commission of an offense under this code unless the provision defining the conduct expressly requires a culpable mental state.   |
| Hondo            | Yes | Strict liab | Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that does not exceed five hundred dollars (\$500.00) does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense. Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that exceeds five hundred dollars (\$500.00) shall require a culpable mental state. |
| Prosper          | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"  |
| Royse City       | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"  |
| Odessa           | Yes | Strict liab | Any violation of this code or of any ordinance set forth herein that is punishable by a fine that does not exceed the amount authorized by section 12.23 of the Texas Penal Code does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense.   |

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|-----------------|-----|-------------|--|
| Liberty         | Yes | Strict liab | Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that does not exceed five hundred dollars (\$500.00) does not require a culpable mental state, and a culpable mental state is hereby not required to prove any such offense. Unless otherwise specifically stated in this code, any violation of this code or of any ordinance that is punishable by a fine that exceeds five hundred dollars (\$500.00) shall require a culpable mental state. |
| Lucas           | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"  |
| Snyder          | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"  |
| Red Oak         | Yes | Strict liab | Separate culpability ordinance - \$500 or more req culp. "However, no penalty shall be greater or less than the penalty provided for the same or similar offense under the laws of the state"  |
| Bee Cave        | Yes | Strict liab | As long as fine is under \$200 - no culpability  |
| Big Spring      | Yes | Strict liab | No culpability required  |
| Manvel          | Yes | Yes         | intentionally, knowing, reckless   |
| Alvin           | Yes | Yes         | no person shall...knowingly, willingly, or neg sec 15-8; penal code ref 42.01(a)(9),(11)   |
| Alpine          | Yes | Yes         | TPC 42.001   |
| Arlington       | Yes | Yes         |  |
| Baytown         | Yes | Yes         | intentionally/knowingly  |
| College Station | Yes | Yes         | Willfully, intentionally or otherwise  |
| Groves          | Yes | Yes         | In each instance in which a criminal offense is established in this Code of Ordinances, and any amendments thereto, a culpable mental state is required as an element of such offense. For purposes of this section, a culpable mental state shall be one of those established by V.T.C.A., Penal Code art. 6.02, and any amendments thereto.  |
| Longview        | Yes | Yes         | Intentionally/knowingly  |
| Lufkin          | Yes | Yes         | intentionally/knowingly  |
| Midland         | Yes | Yes         |  |

|          |     |     |   |
|----------|-----|-----|---|
| Pasadena | Yes | Yes |   |
| Schertz  | Yes | Yes | willfully/intentionally                               |
| Waco     | Yes | Yes |   |
| Manor    | Yes | Yes | Intentionally   |
| Lockhart | Yes | Yes | willful or intentional; sec 36-1; ord no 2012-3 sec 1 |

**Out of 308 Home Rule Cities:**

|                                |     |
|--------------------------------|-----|
| Strict Liability:              | 61  |
| No Express<br>Culpability:     | 209 |
| No Gun Ordinance:              | 22  |
| Other Culpability<br>Language: | 15  |